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In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether an offender convicted of a crime while serving a sentence under the Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, and sentenced to a consecutive term of imprisonment as an adult, must be treated as a YCA offender for the remainder of his YCA sentence.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-15a) is not yet reported. The order of the district court (App. C, *infra*, 18a-20a) and the magistrate's report and recommendation (App. D, *infra*, 21a-29a) are not reported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*, 16a-17a) was entered on March 5, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

18 U.S.C. 5010(c) and (d) provide:

> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.
>
> (d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

18 U.S.C. 5011 provides:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

18 U.S.C. 5015 provides:

> (a) On receipt of the report and recommendations from the classification agency the Director may—
>
> (1) recommend to the Commission that the committed youth offender be released conditionally under supervision; or
>
> (2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or
>
> (3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.
>
> (b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution.

STATEMENT

In 1974, a jury of the Superior Court of the District of Columbia convicted respondent, then 17 years old, of second degree murder, in violation of D.C. Code Ann. § 22-2403 (1973 & Supp. I 1974). Respondent was sentenced to ten years' imprisonment under the Youth Corrections Act (YCA), 18 U.S.C. 5010(c) (App. A, *infra*, 2a). The YCA provides a "program of treatment" of which "[a]n integral part" is "the segregation of the committed persons, insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sentences." *Dorszynski* v. *United States*, 418 U.S. 424, 434 (1974).

While respondent was serving the YCA term, he was convicted of assaulting a federal correctional

officer, in violation of 18 U.S.C. 111. The district court explicitly rejected sentencing under the YCA, finding that respondent would not benefit from YCA treatment. The court instead sentenced respondent to an adult term of five and one-half years' imprisonment, to run consecutively to the YCA sentence (App. A, *infra*, 2a-3a). After a series of disciplinary reports,[1] respondent was placed in the Federal Correctional Institution at Lompoc, California, where he again attacked a correctional officer. He pleaded guilty to assault on a federal officer and was sentenced to an adult term of one year and one day, to run consecutively to his other sentences (*id.* at 3a).[2]

After respondent received these adult sentences, the Bureau of Prisons, following an explicit policy,[3] treated respondent as an adult offender. In 1978, respondent petitioned for a writ of habeas corpus. A United States Magistrate in the Southern District of Illinois[4] recommended that relief be granted and

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[1] We have been advised by the Bureau of Prisons that from the time of his incarceration in July 1974 through July 1980, respondent had been cited in 36 incident reports. Many of his citations are for violent conduct.

[2] At this time, Robinson was still eligible for sentencing under the YCA. The district court that imposed this sentence made no explicit finding that Robinson would not benefit from a YCA sentence (App. A, *infra*, 3a).

[3] Bureau of Prisons Policy Statement No. 5215.2 (Dec. 12, 1978), which deals with the custody of offenders sentenced under the YCA, excludes from its scope "any inmate * * * who is * * * also sentenced to a concurrent or consecutive adult term, whether state or federal."

[4] Respondent filed his petition in the Southern District of Indiana. It was transferred to the Southern District of Illinois when respondent was moved to the United States Penitentiary at Marion, Illinois.

that respondent be "transfer[red] * * * to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011" (App. D, *infra*, 29a). The district court said that it was "hesitan[t]" to order respondent treated as a YCA offender (App. C, *infra*, 20a) but that "Congress has mandated the result which the Magistrate has arrived at" (*id.* at 19a). It therefore adopted the magistrate's report and recommendation (*id.* at 20a).

The court of appeals affirmed (App. A, *infra*, 1a-15a). It held that respondent must be treated as a YCA offender until his original YCA sentence is completed, even though he was sentenced to two consecutive adults terms. It assumed *arguendo* that the subsequent adult sentences constituted findings that respondent would no longer benefit from his YCA sentence, but it said that allowing respondent's initial YCA sentence to be affected by a subsequent adult sentence "would necessarily deprive the judge who imposed the [YCA] sentence * * * of his traditional and exclusive sentencing function" (*id.* at 8a). In reaching this conclusion the court explicitly disagreed with *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980). Quoting from the dissent in *Thompson*, the court said that neither the YCA nor its legislative history suggested that a YCA sentence, once imposed, could be changed by a judge imposing a subsequent sentence on the same offender. The court rejected the government's argument that it would be pointless to provide YCA treatment to an offender who will soon be incarcerated as an adult. The court also ruled that the YCA did not confer on the Bureau of Prisons discretion to decide whether a YCA inmate sentenced to a consecutive adult term should

be confined as an adult offender (App. A, *infra*, 11a-14a).

Judge Pell concurred in the opinion because he believed that the Act required continued YCA treatment for respondent. But he added (App. A, *infra*, 14a-15a):

> The record in this case scarcely indicates that [respondent] was benefitting from YCA treatment. Two federal district judges determined, one explicitly and the other in effect, that [respondent] would receive no benefit from YCA treatment. These determinations would be effective in any event, whenever and however, the YCA period of the sentence was completed. * * * I see, on this record, no indication to think that either [respondent] or society will benefit by continuing the YCA treatment * * *.

REASONS FOR GRANTING THE PETITION

The issue presented by this case is of substantial importance both to the administration of the federal prison system and to the policies underlying the Youth Corrections Act. The decision of the court of appeals conflicts with the positions taken by two other circuits, positions which are to some extent divergent from one another. This conflict threatens to interfere with the efficient operation of the prison system. Moreover, the court of appeals' decision produces an irrational result that could not have been intended by Congress. Specifically, the decision is inconsistent with two of the basic principles of the Youth Corrections Act—that YCA offenders are to be kept free of the influence of hardened adult prisoners, and that the objective of the Act is to provide rehabilitative treatment for

young offenders so that they may be released into society as productive citizens. By effectively requiring recidivists under adult sentences to be mingled with YCA offenders, the decision of the court below will affect not only those YCA offenders who are under consecutive adult sentences [5] but potentially all YCA offenders.

1. In *Thompson* v. *Carlson*, 624 F.2d 415 (3d Cir. 1980), a youth offender was convicted of murder while serving his YCA sentence. The district court in which he was so convicted found that he would not benefit from YCA treatment and sentenced him to a consecutive adult sentence of life imprisonment. On these facts, which parallel those of the present case, the Third Circuit held that the offender "can be returned to an adult prisoner population for the remainder of the YCA sentence" (*id.* at 422). The Third Circuit reasoned that "the concern of the statute is toward those prisoners who will be released following the YCA sentence. Therefore, the purpose of the YCA treatment under segregation is inapplicable to * * *" offenders who have been sentenced to consecutive adult terms (*ibid.*).

Outing v. *Bell*, 632 F.2d 1144 (4th Cir. 1980), cert. denied, No. 80-6005 (Mar. 23, 1981), also involved a youth offender who committed a crime while serving his YCA sentence and received a consecutive adult sentence. The Fourth Circuit, not relying on the second sentencing judge's finding that the of-

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[5] We have been advised by the Bureau of Prisons that, as of December 31, 1980, there were 1,375 inmates serving YCA sentences. Of these, 175, or 12.7%, were also under concurrent or consecutive adult sentences.

fender would not benefit from YCA treatment,[6] specifically upheld the Bureau of Prisons policy of treating such offenders as adults. It said that this policy conformed to the Act and promoted its objectives (632 F.2d at 1146) and that allowing the offender to retain his YCA status would be "contrary to the purposes of the Act" (*ibid.*). Thus in the Third and Fourth Circuits the Bureau would be free to treat an offender situated similarly to respondent as an adult; in the Fourth Circuit, at least, it might be free to do so even if there were no explicit finding by the second sentencing judge that the offender would not benefit from YCA treatment. Indeed, some of the language in *Outing* might be read to suggest that the Bureau *must* treat an offender like respondent as an adult.

The Bureau of Prisons administers an integrated nationwide correctional system, in which certain facilities are specialized to provide specific forms of treatment, training, or security. The decision of the court below and the resulting conflict among circuits threaten to distort the Bureau's administration of this system and to interfere with the Bureau's ability to use the system in the most efficient fashion. Geographical factors that should be irrelevant will enter into decisions properly based on the inmate's needs and characteristics and the system's capacities. For example, the federal facility at Marion, Illinois, has the highest maximum security classification of any federal institution (see App. D, *infra*, 22a). But because it is located in the Seventh Circuit, it cannot be used to house inmates serving YCA terms

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[6] Such a finding was made (see Memorandum for the United States in Opposition, *Outing* v. *Smith*, No. 80-6005, at 2), but the Fourth Circuit nowhere refers to it.

who are subject to consecutive adult terms of imprisonment, even if those inmates have committed several violent crimes and have a history of violence, and even if the Bureau believes that the optimal use of the system's resources would be to confine a particular inmate of this sort at Marion. Such an inmate could be kept in an institution in the Fourth Circuit, and in most cases in the Third Circuit, but in neither of those circuits is there a facility comparable to Marion. Those inmates who should be at Marion will, in turn, occupy places in other institutions that could be more profitably used by different inmates.

2. When Congress enacted the YCA, it did not explicitly deal with the proper treatment of inmates who receive consecutive adult sentences while serving YCA sentences; in fact, it seems clear that Congress gave no attention to this situation. But Congress did make clear the central purposes of the YCA, and the decision of the court below is inconsistent with those purposes. As this Court has said, "[a]n integral part of the treatment program" prescribed by the Act is "the segregation of" offenders committed under the Act, "insofar as practicable, so as * * * to avoid the influence of association with the more hardened inmates serving traditional criminal sentences." *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434. The decision of the court below prohibits the Bureau from confining respondent with the general adult population. Since it will seldom be practical to segregate offenders like respondent from all others, the result of the court of appeals' decision —and the one undoubtedly contemplated by the court—is to require offenders like respondent to be mingled with youthful offenders serving only a YCA sentence.

Respondent, who is now 24 years old, has received adult sentences for two violent crimes. In one instance the sentencing judge expressly determined that respondent would not benefit from a YCA sentence. He has an extensive disciplinary record of violent incidents. It is difficult to believe that when Congress enacted the YCA—which it intended to preclude "herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and * * * subjecting youth offenders to the evil influences of older criminals" (H.R. Rep. No. 2979, 81st Cong., 2d Sess. 2-3 (1950))—it also intended young offenders to be confined with inmates like respondent. As the Fourth Circuit has said, "[j]ust because [an offender with a consecutive adult sentence] had a previous YCA sentence does not make him any the less an adult offender" (*Outing* v. *Bell*, *supra*, 632 F.2d at 1146).

Moreover, the treatment program designed by Congress in the YCA is plainly not intended for an offender who has received a consecutive adult sentence. Congress believed that certain youth offenders could be rehabilitated, and it believed that traditional adult prisoners hardened and corrupted those offenders. See, *e.g.*, H.R. Rep. No. 2979, *supra*, at 2-3; *Dorszynski* v. *United States*, *supra*, 418 U.S. at 432-434. Thus the purpose of YCA treatment was to "correct[]" the offender's "antisocial tendencies" (18 U.S.C. 5006(f)) so that the offender could be "return[ed] * * * to society as [a] social and rehabilitated citizen[]" (H.R. Rep. No. 2979, *supra*, at 5). Respondent, however, will not be returned to society at the end of his YCA sentence; he will immediately begin two adult terms totaling over six years. Nothing in the Act or its legislative history suggests that Congress would have seen any purpose in attempting

to correct an offender's antisocial tendencies and to "rehabilitate [the offender] and restore normal behavior patterns" (*Dorszynski* v. *United States*, *supra*, 418 U.S. at 433) only to release the offender to precisely the adult imprisonment that it believed was incompatible with the rehabilitation of YCA offenders.

Even apart from the futility of providing YCA treatment to an offender who is about to begin an extended adult prison term, respondent has demonstrated, to the satisfaction of two sentencing judges, that he is not the kind of offender who will profit from YCA treatment. Congress intended such treatment for young offenders who "show promise of becoming useful citizens" (H.R. Rep. No. 2979, *supra*, at 1) and who "hold out" a "prospect * * * for success through correctional treatment" (*id.* at 5). The YCA was intended to prevent recidivism, where possible; respondent, and other YCA offenders who have subsequently received adult sentences, have proven themselves to be adult recidivists.

The court of appeals' holding (App. A, *infra*, 6a-11a) that the YCA does not permit the determinations of subsequent sentencing judges to affect respondent's initial YCA sentence is incorrect. Congress made it clear that punishment and treatment under the Act were to be tailored to the characteristics of the particular offender (see H.R. Rep. No. 2979, *supra*, at 5; *Dorszynski* v. *United States*, *supra*, 418 U.S. at 434) and that decisions about sentencing and conditions of confinement under the Act are to be made in light of all available information about the offender (see S. Rep. No. 1180, 81st Cong., 1st Sess. 5 (1949)). The Act itself reflects this approach (see, *e.g.*, 18 U.S.C. 5010(e), 5014, 5016). These principles are incon-

sistent with the court of appeals' view that a YCA sentence is an inflexible prescription that must be followed regardless of subsequent developments and subsequent determinations by sentencing courts.[7]

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JUNE 1981

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[7] The court of appeals also gave insufficient weight to the decision of the Bureau of Prisons to follow its policy and treat respondent as an adult offender. The court of appeals correctly noted that the sentencing judge alone decides whether a defendant will be sentenced as an adult or as a YCA offender (App. A, *infra*, 13a-14a). The issue here, however, concerns the treatment prescribed by the Act for an offender who is confined pursuant to both a YCA and an adult sentence—a matter never specifically considered by Congress. The Bureau of Prisons has the principal responsibility for translating YCA sentences into specific institutional arrangements (see 18 U.S.C. 5011, 5013-5015); here, the Bureau decided that respondent, and other offenders like him, are properly treated as adults. Moreover, the YCA should be interpreted in light of the realities of prison administration, and the Bureau is expert in that area.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 80-1323 and 80-1142

JOHN CARROLL ROBINSON, PETITIONER-APPELLEE, CROSS-APPELLANT

v.

GEORGE A. RALSTON, Warden, RESPONDENT-APPELLANT, CROSS-APPELLEE

Appeals from the United States District Court for the Southern District of Illinois

No. CV 78-2347—James L. Foreman, *Judge*

ARGUED NOVEMBER 6, 1980—DECIDED MARCH 5, 1981

Before SWYGERT, *Circuit Judge*, WISDOM, *Senior Circuit Judge*,* and PELL, *Circuit Judge*.

SWYGERT, *Circuit Judge*. The issue in this appeal is whether a youth offender serving a sentence imposed under the Federal Youth Corrections Act (YCA), 18 U.S.C. § 5005 *et seq.*, must be treated ac-

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* The Honorable John M. Wisdom, United States Senior Circuit Judge for the Fifth Circuit, sitting by designation.

cording to the terms of the YCA after he has received two subsequent adult sentences to run consecutive to his YCA sentence. We hold that under the provisions of the YCA, petitioner-appellee must be treated pursuant to YCA until the termination of his YCA-imposed sentence despite his subsequent sentencing as an adult. Accordingly, we affirm.

I

Petitioner-appellee John Carroll Robinson was seventeen years old when in 1974 he was sentenced to a ten-year term for second degree murder under the provisions of the Federal Youth Corrections Act (YCA), 18 U.S.C. § 5010(c).[1] The trial judge recommended that "his release be dependent upon the attainment of at least an eighth grade level of education and the successful completion of a trade of his own choosing." In addition, the judge recommended participation "in intensive, individual therapy on a weekly basis. . . ."

During his incarceration at the Federal Correctional Institution in Ashland, Kentucky, Robinson was found guilty of assaulting a federal officer. The

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[1] Under the provisions of the YCA, a judge who sentences an offender who is under the age of twenty-two when convicted may (a) place the offender on probation; (b) commit him to the custody of the Attorney General for treatment for a maximum period of four years, with an additional period of probation; (c) make a similar commitment for a period not to exceed the maximum adult sentence for the crime; or (d) sentence the youth offender as an adult. 18 U.S.C. § 5010; *Dorszynski* v. *United States*, 418 U.S. 424, 433-434 (1974). A judge sentencing a youth offender must determine whether the offender will benefit from treatment under the YCA as a condition precedent to sentencing him as an adult. *Dorszynski*, 418 U.S. at 444.

second trial judge decided that Robinson would not benefit from treatment under the YCA and imposed an additional ten-year adult sentence, pursuant to 18 U.S.C. § 4208(b). After receiving a report and recommendation from the Bureau of Prisons, the judge reduced the second ten-year sentence to sixty-six months, to run consecutive to the previously-imposed YCA sentence.

After several subsequent transfers, Robinson was placed in the Federal Correctional Institution in Lompoc, California where he pled guilty to assaulting another federal officer. For that offense, he was given a regular adult sentence of one year and one day to run consecutive to his YCA and other adult sentences. The third trial judge did not make an explicit finding that Robinson would receive no benefit from a YCA sentence, although it is not disputed that Robinson was still eligible for sentencing under the YCA.

After the imposition of his second adult sentence, Robinson was placed in the United States Penitentiary at Terre Haute, Indiana, where he was treated as a regular adult offender. He was not segregated from non-YCA adult offenders nor was he provided the treatment mandated by section 5011 of the Youth Corrections Act, 18 U.S.C. § 5011.[2] It is not disputed

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[2] According to 18 U.S.C. § 5011:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director [of the Bureau of Prisons] shall from time to time designate, set aside, and adapt institutions and agencies under the

that Robinson was at that time serving his initial YCA sentence. After exhausting his administrative remedies, Robinson filed a petition for a writ of habeas corpus on May 25, 1978 in the United States District Court for the Southern District of Indiana. The case was subsequently transferred to the Southern District of Illinois because in September 1978 Robinson was moved to the United States Penitentiary at Marion, Illinois. Robinson was still serving his YCA sentence when he was incarcerated with adult prisoners in the control unit at Marion. The basis of the habeas petition was that Robinson was serving a YCA sentence and was therefore entitled to be segregated from adult offenders pursuant to 18 U.S.C. § 5011.

On the recommendation of the United States Magistrate that Robinson be transferred to an institution in which he would be segregated from adult offenders and receive the treatment contemplated by the YCA, Judge Foreman granted Robinson a writ of habeas corpus, concluding "after a thorough researching of the applicable statute and case law, . . . that Congress mandated the result which the Magistrate has arrived at." On January 7, 1980 the district court ordered the Government to transfer Robinson from Marion to an institution where he would be segregated from other adult offenders and would receive the prescribed treatment. On January 16, 1980, the Government filed a motion to stay the order pending appeal. That motion was granted.

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control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

The Government appealed from the district court's January 7 order granting the writ of habeas corpus, and Robinson appealed the January 22 stay of that order. The appeals were consolidated.

On June 17, 1980, Robinson was again transferred, this time from Marion to the Federal Correctional Institution at Memphis, Tennessee. The institution at Memphis does have a YCA unit, but Robinson was housed with the general adult prison population and did not receive YCA-mandated treatment.[3]

II

The respondent Warden contends that the district court erred in holding that the YCA requires that petitioner be treated according to the provisions of the YCA after he has received two subsequent adult sentences to run consecutive to his YCA sentence. Petitioner argues that the decision reached by the district court is mandated both by the YCA and the United States Constitution.[4]

The issue before us has never been decided by this court. The Third Circuit, however, faced with a similar fact pattern, concluded that a second judge's determination that an offender would not derive benefit from a YCA sentence and must therefore serve the second sentence as an adult prisoner was also a finding that "*continued* service of the original sentence under YCA conditions is no longer beneficial." *Thompson* v. *Carlson*, 624 F.2d 415, 422 (3d Cir. 1980) (emphasis in original). On the basis that

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[3] At oral argument, counsel for petitioner stated that Robinson has since been transferred to a hospital in Butner, North Carolina, for psychiatric evaluation.

[4] We need not decide the constitutional issues raised, because we hold that the statute mandates the result we reach.

there was a "judicial reevaluation [of the original YCA sentence] in light of currently available information," the court held that the offender could be treated as an adult for the duration of his YCA sentence. *Id.* Because we conclude that the YCA mandates that the petitioner be treated as a YCA prisoner so long as he is serving his YCA sentence, we respectfully disagree with the decision of the Third Circuit.[5]

At the outset we note that in both our case and in *Thompson*, the judge imposing the consecutive adult sentence made no actual reevaluation of the YCA sentence then being served. Rather the Warden here argues and the court in *Thompson* concluded that the subsequent judge's determination that the sentence he imposed should be served as an adult was an implicit finding that the offender would not continue to benefit from YCA treatment for the duration of his YCA sentence. We find no evidence in the record from which to conclude that the subsequent judges did in fact reevaluate the original YCA sentence; however, we do not rest our holding on that factual determination. We conclude that the YCA does not permit such a reevaluation, even if it were explicitly made.

The parties agree that the YCA contains no provision authorizing a YCA sentence to be reevaluated by another judge. Nonetheless, the Warden urges, quoting from the Third Circuit's decision in *Thompson*, that we "fill in the interstices of the statute" by allowing a second judge who sentences the offender

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[5] This opinion has been circulated among all judges of this court in regular active service. No judge favored a rehearing en banc on the question of our declining to follow *Thompson* v. *Carlson*.

as an adult also to reevaluate the YCA sentence. 624 F.2d at 419. Based on our analysis of the statutory language, the legislative history, and the Supreme Court's decision in *Dorszynski* v. *United States*, 418 U.S. 424 (1974), we reject the Warden's suggested interpretation.

Petitioner was initially sentenced under the YCA, the purpose of which was "to provide a better method of treating young offenders convicted in federal courts in that vulnerable age bracket, to rehabilitate them and restore normal behavior patterns." *Dorszynski* v. *United States*, 418 U.S. 424, 433 (1974). According to the terms of the statute, regardless of whether he is housed in an institution of maximum, medium or minimum security, a committed youth offender must be segregated from adult prisoners. 18 U.S.C. § 5011; *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978).[6] In addition, a committed youth offender must be sentenced to an institution or agency "that will provide the essential varieties of treatment" and be "segregated according to [his need] for treatment." 18 U.S.C. § 5011. As the Third Circuit stated in *Micklus* v. *Carlson*, 632 F.2d 227, 237 (3d Cir. 1980) (emphasis in original): "The major thrust of Section 5011 is its requirement of both *segregation* and *treatment* for committed youth offenders." In *Micklus*, the court held that the rights to segregation and treatment are clear en-

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[6] "Youth offender means a person under the age of twenty-two years at the time of conviction.

18 U.S.C. § 5006(e).

"Committed youth offender" is one committed for treatment hereunder to the custody of the Attorney General pursuant to section 5010(b) and 5010(c) of this chapter.

18 U.S.C. § 5006(f).

titlements under the YCA which create a liberty interest protected by the Due Process Clause of the United States Constitution.

Sentencing a youth offender under the YCA does "not deprive the court of any of its present function as to sentencing." S. Rep. No. 1180, pp. 10-11, quoted in *Dorszynski* v. *United States*, 418 U.S. at 439. To interpret the YCA as permitting a second judge who sentences the petitioner on a totally unrelated matter to reevaluate the original YCA sentence would necessarily deprive the judge who imposed the only sentence currently being served of his traditional and exclusive sentencing function. The legislative history of the YCA indicates an adherence to traditional sentencing doctrine by specifying that the benefit of the Act would be available to those " 'who *in the opinion of the sentencing judge* show promise of becoming useful citizens . . . .' H.R. Rep. 2979, p. 1 (emphasis added)," quoted in *Dorszynski*, 418 U.S. 436. The decision to sentence Robinson under the YCA was left to the discretion of the judge who determined that he would benefit from its provisions for the period for which he was sentenced. That sentence was not intended to be revoked by another judge in a completely different proceeding on another matter.

In *Dorszynski* v. *United States*, 418 U.S. 424 (1974), the Supreme Court interpreted the YCA to require a trial judge to make a finding that a youth offender would derive no benefit from a YCA sentence before sentencing him as an adult. The Court held, however, that the no benefit finding was not to be read as a substantive standard which had to be satisfied. That reading, the Court reasoned, would subject the sentence to appellate review and thereby limit the sentencing discretion of the trial court:

> The intent of Congress was in accord with long-established authority in the United States vesting the sentencing function exclusively in the trial court.
>
> . . .
>
> . . . We will not assume Congress to have intended such a departure from well-established [sentencing] doctrine without a clear expression to disavow it. As our review has shown, the exclusive sentencing power of district judges was acknowledged, and Congress' intention to affirm that power was clearly indicated.
>
> . . . We hold that the discretion vested in a district judge under § 5010(d) is essentially the same as the traditional discretion vested in the court . . . .

418 U.S. at 440-42 (footnote omitted).[7] The Warden's interpretation of the YCA is such "a departure from well-established doctrine without a clear [congressional] expression to disavow it," and we reject it here.

A judicial reevaluation of a YCA sentence is not inconsistent with the YCA, the Warden insists, because the YCA expressly allows judicial reevaluation in 18 U.S.C. § 5023(a) and 18 U.S.C. § 5010(a). The relevant portions of those sections provide:

> Nothing in this chapter shall limit or affect the power of any court to suspend the imposition or

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[7] As the Supreme Court pointed out in *Dorszynski* v. *United States*, 418 U.S. at 440, n.14, it has been noted that " 'the discretion of the judge . . . in [sentencing] matters is virtually free of substantive control or guidance,' Kadish, *Legal Norm and Discretion in the Police and Sentencing Processes*, 75 Harv. L. Rev. 904, 916 (1962)."

> execution of any sentence and place a youth offender on probation. . . .

18 U.S.C. § 5023(a).

> If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

18 U.S.C. § 5010(a).

There are two crucial distinctions between the statutory provisions cited and the interpretation of the YCA urged by the Warden. First, we read the statute to refer to action taken by the judge who originally imposed that sentence, not by another judge who is sentencing the youth offender in an entirely different matter. As the Supreme Court noted, "the new options of treatment and probation [are] made available to the federal *sentencing court* under the Act," *Dorszynski*, 418 U.S. at 435 (footnote omitted) (emphasis added). Second, the nature of the reevaluation proposed by the Warden is vastly different from that in the above-cited provisions. Sections 5023 and 5010(a) simply make clear that the YCA was not intended to limit the already existing power of the trial judge to give suspended sentences or probation. *See Thompson* v. *Carlson*, 624 F.2d 415, 425-26 (3d Cir. 1980) (Adams, J., dissenting).

A novel sentencing option is expressly given in section 5021(b):

> Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation

> theretofore fixed by the court, which discharge shall automatically set aside the conviction . . . .

That section, authorizing the sentencing judge to discharge the offender unconditionally and to set aside the conviction, is consistent with the purpose of the YCA, which represents "a departure from traditional sentencing, and [is] focused primarily on correction and rehabilitation." *Dorszynski*, 418 U.S. at 433. The Warden asks us to read into this Act which has as its ultimate purpose rehabilitation, a highly unusual sentencing option that would permit one judge to reevaluate another judge's YCA sentence and impose in its place a traditional adult sentence. There is "not a word" in the statute or its legislative history "about augmenting sentences or about having a second judge in any way change them." 624 F.2d 415, 426 (3d Cir. 1980) (Adams, J., dissenting). Such a reading is contrary to the letter and the spirit of the act, and the cited provisions do not convince us otherwise.

The Warden reminds us that when the plain meaning of the words of a statute leads to an " 'absurd or futile' " result, the courts must look beyond the statutory language. *Perry* v. *Commerce Loan Co.*, 383 U.S. 392, 400 (1966) (citation omitted). Because petitioner here will eventually be subject to the influence of hardened criminals inasmuch as he will have to serve two consecutive adult sentences, it is argued that requiring him to be treated according to the terms of the YCA for the duration of the YCA sentence is a futile act. We do not agree. As Judge Adams stated in his persuasive dissent in *Thompson* v. *Carlson*,

> [I]t may be that a youth who goes through a period of treatment in a youth correction center

> would be less susceptible to the influences of hardened criminals during his subsequent confinement than one not so treated. This might be so if one accepts the motivating assumption, which was central to the enactment of the statute, that an offender is more susceptible to corrective treatment and rehabilitation as a "youth" than in later years, *Dorszynski*, 418 U.S. at 432-33, 94 S.Ct. at 3047-48.

624 F.2d at 428.

Additionally, as counsel for petitioner suggested at oral argument, the two judges who subsequently imposed the consecutive adult sentences, presumably knowing that petitioner was currently serving a YCA sentence, might have decided to sentence petitioner as an adult precisely because he was currently a YCA prisoner—believing that after the completion of YCA treatment, further treatment would not be needed; or that if petitioner had not benefited from treatment at the conclusion of his YCA sentence, he would not benefit from a second YCA sentence.

We agree with the Eighth Circuit which stated in *Mustain* v. *Pearson*, 592 F.2d 1018, 1021 (8th Cir. 1979) (citation omitted) (emphasis added):

> While the rehabilitative potential under [the YCA] might be lessened by a consecutively imposed consecutive adult sentence, this consequence stems from the subsequent offense and does not invalidate the subsequent sentence . . . *Nor could it render legally ineffective the* [*YCA*] *sentence.*

III

The Warden argues alternatively that 18 U.S.C. § 5011 should be interpreted to give the Bureau of

Prisons the discretion to decide whether a prisoner serving a YCA sentence but facing a consecutive adult sentence should be confined as an adult. The pertinent part of that section provides:

> The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs.

18 U.S.C. § 5011.

The "insofar as practical" language, it is suggested, permits the Bureau of Prisons to determine that petitioner may be treated as an adult prisoner, despite the fact that he is serving a sentence imposed under the YCA. That argument was rejected by the Third Circuit in *Thompson*:

> If we were to so construe the statute, we would expand considerably the power given to the Bureau of Prisons by vesting in it that which Congress has given exclusively to the judiciary, *i.e.*, the determination whether the offender can benefit under the YCA. We find no statutory basis or policy reason for such a construction. Despite the control given the Bureau of Prisons over many aspects of the commitment of the youth offender, Congress has not given it either the power to invoke or the power to revoke the application of the statute to a committed youth offender. Even in the case of prisoners who have

> manifested serious adjustment difficulties after commitment, the Bureau of Prisons is limited to designation of an appropriate institution or, as we noted in [*United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3d Cir. 1978)], segregation of committed youth offenders according to their needs for treatment. 572 F.2d at 113 n. 10.

624 F.2d at 421.

As was pointed out in *United States ex rel. Dancy* v. *Arnold*, 572 F.2d at 113 n. 10, the problem of the corruptive influence of a criminally sophisticated YCA offender was foreseen by Congress; the YCA provides for treatment in maximum security institutions and requires that "classes of committed youth offenders[] be segregated according to their needs for treatment." 18 U.S.C. § 5011. For the reasons given in *Thompson*, we hold that the Bureau of Prisons does not have the power to determine that a committed youth offender serving a YCA sentence can be treated as an adult prisoner even though he was subsequently sentenced to additional terms as an adult.

In summary, we hold the trial judge properly ruled that petitioner must receive segregation and treatment according to the provisions of the YCA for the duration of his YCA sentence.[8] The district court is affirmed.

PELL, *Circuit Judge*, concurring.

The record in this case scarcely indicates that Robinson was benefitting from YCA treatment. Two

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[8] In view of our decision, we dismiss the cross-appeal from the district court's stay pending appeal, because that stay will automatically terminate when the mandate of this court issues.

federal district judges determined, one explicitly and the other in effect, that Robinson would receive no benefit from YCA treatment. These determinations would be effective in any event, whenever and however, the YCA period of the sentence was completed. That might have been very shortly after the date on which the adult sentences were entered.

While I see, on this record, no indication to think that either Robinson or society will benefit by continuing the YCA treatment, Congress, by the statute applicable in this case, has mandated the continuance.

Accordingly, I concur in Judge Swygert's opinion.

APPENDIX B

Opinion by Judge Swygert

Judge Pell concurring

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

March 5, 1981

Before

Hon. LUTHER M. SWYGERT, Circuit Judge
Hon. JOHN M. WISDOM, *Senior Circuit Judge* *
Hon. WILBUR F. PELL, Circuit Judge

Nos. 80-1142 & 80-1123

JOHN CARROLL ROBINSON, PETITIONER-APPELLANT,
CROSS-APPELLEE

vs.

GEORGE A. RALSTON, Warden
RESPONDENT-APPELLEE, CROSS-APPELLANT

Appeals from the United States District Court
for the Eastern District of Illinois
Denton Division

No. 78-C-2347—Judge James L. Foreman

JUDGMENT—ORAL ARGUMENT

This cause was heard on the record from the United States District Court for the Eastern District

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* The Honorable John Wisdom, United States Senior Circuit Judge for the Fifth Circuit, sitting by designation.

of Illinois, Benton Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby AFFIRMED, in accordance with the opinion of this Court filed this date.

APPENDIX C

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 78-2347

JOHN CARROLL ROBINSON, PLAINTIFF

vs.

GEORGE A. RALSTON, WARDEN, DEFENDANT

Filed January 7, 1980

ORDER

FOREMAN, Chief Judge:

Before the Court is the Report and Recommendation of the United States Magistrate for the Southern District of Illinois. The Magistrate recommended that the petitioner's request for a writ of habeas corpus be granted. The defendant, by the United States Attorney for the Southern District of Illinois, has objected to the Report and Recommendation. Therefore, the Court will proceed to the merits.

The Magistrate's opinion sets forth all of the pertinent facts and the analysis of the proper law in this matter in a very exhaustive opinion. For that reason, the Court feels no need to reiterate the facts and the law, but will only highlight certain points that it thinks pertinent at this time. The Court notes at the outset that it is very cognizant of the tremendous implications of granting a writ of habeas corpus to an individual such as the petitioner who has proven himself to be such a disciplinary prob-

lem in the federal prison system. The Court, however, after a thorough researching of the applicable statute and case law, feels that Congress has mandated the result which the Magistrate has arrived at. The Court is very wary of granting the relief in this matter, but Congress has left no question as to its intent in enacting the Youth Corrections Act. Further, Congress has set forth specific measures that the Bureau of Prison can take to deal with a YCA offender such as the petitioner in this matter. The statute clearly sets forth that "classes of committed youth offenders shall be segregated according to their needs for treatment."

Congress has set forth in very specific terms the statutory scheme under the YCA. The statute leaves little doubt as to exactly what Congress' intention was under the YCA. The statute speaks in directive and not discretionary terms. The Court has carefully reviewed the very cogent arguments raised by the United States Government in its objections to the Report and Recommendation of the Magistrate, but feels that any changes in the interpretation of the YCA must come from Congress, and is not a role of the federal courts.

This Court is especially impressed with the analysis of the Third Circuit in *United States ex rel. Dancy* v. *Arnold*, 572 F.2d 107 (3rd Cir. 1978). The *Dancy* case exhaustively reviewed the statute and its legislative history and clearly indicates to this Court that the results reached by the Magistrate in this matter is the only result this Court can arrive at. To further bolster that thinking, the Courts cites *Thompson* v. *Carlson*, Civil No. 78-973 (M.D. Pa. decided 10/3/78). As the Magistrate stated in his opinion, the facts of *Thompson* mirror the facts in

the case before the Court. In a well reasoned opinion, Judge Muir of the Middle District of Pennsylvania, adopted the reasoning in *Dancy* in rejecting all of the Government arguments in favor of denial of the writ of habeas corpus. The Court is very persuaded by *Thompson* and *Dancy* and after a thorough investigation into the statute, its legislative history and the case law interpreting the statute, the Court feels that it must adopt the Report and Recommendation of the Magistrate in this matter. The Court reiterates its hesitancy in this matter. However, once again the Court must state that any changes in the Youth Corrections Act must be made by Congress and it is not a function of the federal courts to be a super legislature when the Bureau of Prisons is unhappy with a statute of Congress. Therefore, the Report and Recommendation of the United States Magistrate is hereby ADOPTED, and it is ordered that the respondent be directed to transfer the petitioner Robinson to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 within thirty (30) days of this order.

IT IS SO ORDERED.

DATED: January 7, 1980

/s/ James L. Foreman
Chief Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Civil No. 78-2347

JOHN CARROLL ROBINSON, PLAINTIFF

vs.

GEORGE A. RALSTON, WARDEN, DEFENDANT

Filed August 23, 1979

REPORT AND RECOMMENDATION

MEYERS, Kenneth J.
United States Magistrate

This matter is before this Court following a hearing on Petitioner's pleading seeking a writ of habeas corpus.

Petitioner is currently incarcerated at the United States Penitentiary in Marion, Illinois. On May 10, 1974, Petitioner, age 17, was sentenced to a term of 10 years under 18 U.S.C., § 5010(c) of the Youth Correctional Act (hereinafter referred to as YCA). The sentencing judge recommended that Petitioner's release be dependent upon the attainment of, at least, an eighth grade level of education and the successful completion of a trade of his own choosing. Petitioner was initially committed to the Federal Correctional Institution (FCI) at Ashland, Kentucky.

While interned in Ashland, Petitioner was charged with and later convicted of Assaulting a Federal Officer. Pursuant to § 5010(c) of the YCA, Petitioner was given an additional 66 month sentence to run

consecutive with his prior sentence. Because of this incident, as well as additional adjustment problems, Petitioner was, thereafter, frequently transferred from one federal adult institution to other more secure institutions. While confined in the FCI at Lompoc, California, Petitioner was charged with Assaulting a Federal Officer and later sentenced to a term of one year, to run consecutively with his two prior sentences. On this occasion, however, Petitioner was sentenced pursuant to adult provisions in contrast to his prior YCA sentences. Following an intermediate stay at the United States Penitentiary in Terre Haute, Indiana, where Petitioner once again accumulated numerous misconduct reports, Petitioner was sent to his current residence, the United States Penitentiary at Marion, Illinois. Marion is the highest maximum-security adult correctional institution in the United States.

The following statutory scheme provides the necessary groundwork for proper deliberation. Section 4082 of Title 18, which was enacted long before 1950, when the YCA became law, provides in pertinent part:

> (a) A person convicted of an offense against the United States shall be committed, for such term of imprisonment as the court may direct, to the custody of the Attorney General of the United States, who shall designate the place of confinement where the sentence shall be served.
>
> (b) The Attorney General may designate as a place of confinement any available, suitable, and appropriate institution or facility . . . and may at any time transfer a person from one place of confinement to another.

The YCA sets forth for the discretionary use of federal judges, a system for the sentencing and treatment of eligible young offenders. As defined in 18 U.S.C., §§ 5006(e) and (f), a "youth offender" is a person under the age of twenty-one at the time of conviction, and a "committed youth offender" is one who is sentenced pursuant to 18 U.S.C., § 5010 (b) or (c). Petitioner's initial two sentences were issued pursuant to § 5010(c) which states:

> (c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Division prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Division as provided in section 5017(d) of this chapter.

The treatment mentioned in the above section is discussed in the following segment of the YCA at § 5011:

> Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the

> Department of Justice for treatment. Insofar as practical, such institutions and agencies shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

The following two excerpts from the legislative history of the YCA aid in construing the intent behind the Act:

> By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, without the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check, it. H.R. Rep. No. 2979, 81st Cong., 2d Sess. (1950) (hereinafter H.R. Rep. No. 2979); 1950 U.S. Code Cong. Service, p. 3985.
>
> . . . .
>
> . . . promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens, and so will avoid the degenerative and needless transformation of many of those persons into habitual criminals . . . . The underlying theory of the bill is to substitute for retributive punishment methods of training and treatment designed to correct and prevent antisocial tendencies. It departs from the mere punitive idea of dealing with criminals and looks primarily to the objective

idea of rehabilitation. H.R. Rep. No. 2979; 1950 U.S. Code Service, pp. 3983, 3985.

Petitioner is currently confined in the control unit in Marion. This unit is comprised of about 17 individual cells housing non-YCA offenders. Access to other sections of the institution is strictly limited and inmates of this unit are required to remain in their cells when not otherwise involved in designated prison programs. The Petitioner participates in the industrial work program offered within Marion.

Petitioner claims that his incarceration in an adult correctional institution, where no treatment facilities are available violates the provisions under which he was sentenced. Respondent, on the other hand, submits three arguments in opposition. (1) The Attorney General has complete discretion in designating the specific correctional institution in which a convicted individual is to serve his sentence. (2) Petitioner is separated from non-YCA offenders. (3) Petitioner should be secluded from YCA offenders since he has also been sentenced under adult sentencing provisions.

In support of the proposition that the Attorney General has the complete discretion to transfer prisoners sentenced under the YCA to adult penitentiaries, the Respondent has cited the following cases: *Abernathy* v. *U. S.*, 418 F.2d 288 (5th Cir. 1969); *Barr* v. *U. S.*, F.Supp. 990 (W.D. Okla. 1976); *Foote* v. *U. S.*, 306 F.Supp. 627 (D. Nev. 1969). This Court, however, is in agreement with the analysis and judgment in *Dancy* v. *Arnold*, 572 F.2d 107, 112 (3rd Cir. 1978):

> We are not persuaded by these cases. We note first that none of them make reference to the scope and purpose of the YCA sentencing scheme

and whether confinement of youth offenders in penitentiaries is consistent with the Act's rehabilitative goals. Nor is reference made to the legislative history of the Act or the congressional intent behind it. We agree with the Harvin court (*Harvin* v. *U. S.*, U.S. App. D.C. 199, 455 F.2d 675, *cert. denied*, 404 U.S. 943) that youth offenders cannot, consistent with the Act's rehabilitative purposes, be placed among adult prisoners in a penitentiary. That the Act was designed to spare youth offenders the corruptive influence of prison life and association with adult criminals is made clear by its legislative history.

The origin of the YCA is a 1942 report on punishment for crime by the Judicial Conference which recommended

> for offenders under 24 years of age the establishment of a special system, more flexible than the present penal system, giving opportunity for the training of offenders for useful life through the learning of trades and experience of living with their fellows under supervision and under more wholesome conditions than are possible in the usual prisons. The courts will have an option . . . to commit youthful offenders to such a system, in lieu of conventional imprisonment. (Report to the Judicial Conference of the Committee on Punishment for Crime (1942), at 1-2.)

Respondent's second theory is that Petitioner is, in fact, separated from non-YCA offenders. The manner in which the Petitioner is separated from non-YCA offenders, however, undermines the Re-

spondent's contention. Petitioner is placed in segregation (confined in his cell for most of the day) and, in a sense, is separated from not only non-YCA offenders but also YCA offenders. Nonetheless, Petitioner is still in close proximity to the non-YCA offenders. Petitioner's cell is but one among 17 within the control unit. Petitioner is privy to the activity in the adjacent cells which house non-YCA offenders. Moreover, Petitioner is directly in contact with the non-YCA offenders while involved in his industrial work program. Such separation/segregation neither fulfills the letter nor the spirit of the law.

Furthermore, the fact that Petitioner is in segregation would necessarily curtail his opportunity to participate in any available treatment programs. Petitioner goes further, however, and maintains that the Respondent has failed to provide any treatment program, whatsoever, as required by 18 U.S.C., § 5011. This Court agrees. The meaning of treatment as used in § 5011 is defined no more precisely than "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders . . . ." § 5006 (f). Although the definition is admittedly broad, the Respondent, nevertheless, has failed to demonstrate the establishment of a single program which complies. This Court finds that the industrial work program offered by Marion does not fall within the ambit of the statute's definition of treatment as it does not provide "corrective and preventive guidance" as required. Furthermore, the recent decision in *Lono* v. *Fenton*, 581 F.2d 645 (7th Cir. 1978), has provided a more definite interpretation of "treatment" as used in this Act which imposes a greater burden upon

the Respondent to demonstrate that a distinctive "treatment" program has been actually administered.

Respondent's final argument is that Petitioner's adult sentence negates the force and effect of the Petitioner's prior YCA sentences. The court in *Thompson* v. *Carlson*, No. 78-973 (M.D.Penn. March 12, 1979) (attached hereto), has specifically addressed this issue. The facts in *Thompson* mirror the ones in the instant case. Thompson was initially sentenced under YCA provisions. While incarcerated, he was charged with Murder. He was, thereafter, sentenced under adult sentencing provisions and sent to an adult correctional institution. The respondents in *Thompson* advanced arguments identical to the ones presented in the instant case. In reply, the court stated:

> Respondents also argue that it is incorrect to expose other youth offenders to Thompson who has been convicted of an adult sentence because 18 U.S.C., § 5011 requires the segregation of youth offenders from other offenders. It is the Court's view that this argument carries little weight. 18 U.S.C. § 5011 also provides for segregation of classes of committed youth offenders. Therefore, while it may be difficult to send Thompson to a youth corrections facility, the provisions are made in the statute for keeping Thompson separate from other youth offenders.
>
> Respondents point to the Congressional intent the Youth Corrections Act of separating persons found suitable for treatment under the Act from those not suitable for said treatment. Thus, the Respondents argue that to incarcerate Thompson with other youth offenders violates that intent of Congress. However, as noted above, the Act pro-

vides for segregation of classes of offenders. Presumably, an inmate who has been sentenced under both the Youth Corrections Act and to an adult term constitutes a separate class of youth offender and would be segregated. Id. at 4.

In conclusion, the Court believes that there are two conditions mandated by the YCA prior to the placement of a YCA offender within an adult correctional institution. (1) The YCA offender must be effectively separated from non-YCA offenders. (2) Distinctive treatment programs must actually be offered and administered to YCA offenders. See *Dancy, supra* at 113, n.9; *Brown* v. *Carlson*, 431 F.Supp. 755, 773 (W.D.Wis. 1977). Neither condition has been met by the Respondent in the instant matter.

For the above reasons, IT IS RECOMMENDED that the Petition for a Writ of Habeas Corpus be GRANTED. Further, that the Respondent be directed to transfer Robinson to an institution at which he will be segregated from adult offenders and will receive treatment as prescribed by 18 U.S.C. § 5011 within thirty (30) days.

RESPECTFULLY SUBMITTED this 23rd day of August, A. D. 1979.

/s/ Kenneth J. Meyers
KENNETH J. MEYERS
United States Magistrate

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